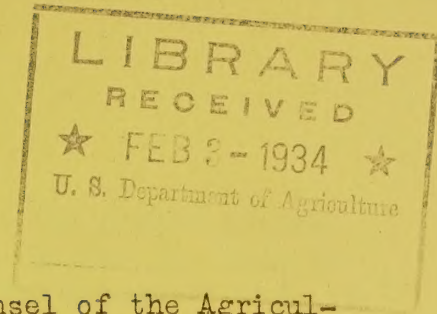


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non profit systems



Excerpt from address of Jerome N. Frank, general counsel of the Agricultural Adjustment Administration, before the Association of American Law Schools, in Chicago, Saturday, December 30, 1933, at 2 P.M.

An effort to preserve the profit system, by eliminating its worst evils and increasing its advantages to the people as a whole, is a major objective of the Roosevelt New Deal, Jerome N. Frank, general counsel of the Agricultural Adjustment Administration, said in an address today at the meeting of the Association of American Law Schools in Chicago.

The real enemies of the profit system and those who are making the Roosevelt Administration's task most difficult, Mr. Frank said, are those who resist all attempts at reform and devote all their efforts to perpetuation of all features of the existing system, without any abatement of its worst evils. Mr. Frank characterized these opponents of reform as being, in the truest sense, the "radicals" whose efforts, if successful, might lead to a destruction of the present social order.

A part of his address follows:

"It may be worth while to note that the experimentalist lawyers are not the products of any one law school. They come from Columbia, Yale, Harvard, and the law schools of the Middle and Far West. The experimentalist attitude may have been fostered, in its inception, at Columbia and Yale, but today it is an attitude which has spread everywhere. It is part of the spirit of the times.

"I have said that these experimentalist lawyers worked admirably with the experimentalist economists. I might have said that they and those economists often play interchangeable roles, the lawyers thinking in terms of experimental economics, the economists thinking in terms of experimental jurisprudence. It is perhaps because their thinking contains this experimental economic element that these lawyers are denounced as radicals. Of course the term radical is merely a verbal brick. In place of giving reasons for disagreeing with an idea, it is the habit of some people to refuse to make their objection explicit, but instead to try to demolish the proponent of the idea with an emotion-stirring epithet.

"The fact is, that if the word radical means a ruthless thoughtless destroyer of cherished institutions, those who pose as the enemies of the so-called radicals are themselves the most dangerous of radicals. They are recklessly ignoring the gravest kind of evils, which rather than the correctives being applied to those evils, are the real dangers to the social order. For if force ever undermines the present American system, it will be because of the stubborn and blind refusal of a few powerful beneficiaries of the old order to accept improvements, and of their attacks on and obstruction to needed revisions, of traditional business practices. Let me briefly indicate what I mean.

"The majority of the American people are still devoted to the profit system. They still believe that there is substantial worth in using the desire for individual profit as one of the important incentives in getting done the necessary work of the world. Although the profit system, as it has worked recently, seems to have worked poorly, most Americans believe that, properly controlled, it can work well. As long as the majority of the American people continue to cherish that system, it would be impossible, even if it were considered desirable, to abandon it completely in favor of another system. To do so would be to fly in the face of our current folkways. The course of the wise statesman today is clear, if he wishes to avert complete breakdown. He will seek, so far as possible, to eliminate the evil aspects of the profit system. He will give that system a fair trial.

"For the truth is that the profit system has not heretofore been given a fair trial. As I see the New Deal it is to be an elaborate series of experiments which will seek to ascertain whether a social economy can be made to work for human welfare by readjustments which leave the desire for private financial gain still operative to a considerable extent. It will permit the profit system to be tried, for the first time, as a consciously directed means of promoting the general good.

"We are to use the method of trial and error to determine whether, when modified so as to make it work at its best, the profit motive can or cannot adequately promote social well-being. It is no longer to go on uncurbed, anarchistically, and unguided. We are to have the opportunity to see whether an intelligently controlled profit economics (supplemented by important non-profit devices such as Public Works, Civil Works Administration, the Federal Surplus Relief Corporation and others) can bring an abundant and secure life to the majority of our citizens. We have witnessed in the past few years how profit economics, if not intelligently directed, can lead to a smash-up. Our people have lost faith in the hit or miss way of running our industries and our agriculture. But the Old Dealers, in or out of politics, refuse to recognize the dangerous antagonism of the bulk of our people to the old ways in their undirected form. The Old Dealers want to restore both the evil and the good of the 1925-1929 days. If they were successful, they would in short order destroy completely what perhaps can be preserved of those old ways. In their indiscriminate reverence for the past, they are inviting chaos and perhaps violent destruction.

"And yet they hurl the word radical at those who are trying to find out whether, stripped of its worst features and intelligently revised, the traditional economics of America can, in part, be conserved. They denounce those, engaged in that experiment, who would eliminate any small feature of the pre-existing anarchistic method of conducting industry or banking. They are playing the role of the Bourbons, they are fostering violent change, in their resistance to unavoidable modifications of institutions whose uncontrolled workings have produced untold miseries and consequent discontent.

"I cite the following as an illustration of the extreme and absurd character of their opposition to changes in what they consider the sacredness of the old order: There is an industry the components of which have frequently been in the courts with respect to their alleged violations of the anti-trust laws. They have asked the Secretary of Agriculture to enter into an agreement with them which would grant them substantial exemptions from the rigors of the Sherman Act. It has been suggested that if those exemptions are granted to that industry, thus reversing a

forty-year-old governmental anti-trust policy, the Secretary should reserve the right to examine their books (of course, keeping confidential the information he thus obtains), since in no other way than through such access to the books can he accurately ascertain whether and to what extent the industry exercises these exemption privileges in the interest of or adversely to the farmers and consumers. This right to examine books has been generally asked by the Agricultural Adjustment Administration of industries seeking such exemptions, and, this right has been generally granted. Yet this particular industry has repudiated the suggestion that it be treated in like manner, intimating that those who advocate such book examination are dangerous revolutionaries who are seeking to subvert the fundamental principles on which American business has been conducted and threatening to overturn the profit system in toto. Their attitude is almost humorous when it is remembered that the Bureau of Internal Revenue already has complete access to their books. This kind of resistance to such moderate measures is indicative of the die-hard Bourbonism which condemns any change as dangerously destructive. For it indicates that there are still some rock-ribbed standpatters in this country who have forgotten all too soon the disastrous adventures of Insull and Kreuger, the closing of the banks, the shutting down of schools, the horrors of unemployment, the outrageous consequences of an unplanned economy to millions of farmers and their families. In their stupid forgetfulness, they urge us to go back as soon as possible to an era of drunken prosperity which led inevitably to this prolonged and horrible morning-after. But the bulk of our people are not thus forgetful. They want peaceful, tranquil, well-ordered lives..... The Old Dealers, I repeat, in their blind opposition to the great experiment, are indeed the extreme radicals. For the Bourbons are always the fomenters of violent and destructive revolution.

"As a result of an economic catastrophe, we are in the midst, then, of a period when experimentation is an imperative necessity. The old folkways brought us to the verge of breakdown. Those folkways need to be revised. And a great leader is hard at work on that job. He is trying to give the forgotten man a decent life, free of gnawing insecurity and with adequate leisure-- aims made possible of achievement by the remarkable accomplishments of applied science in modern times. Perhaps within the near future these aims can be worked out. If and when they have, then perhaps experimentation can be diminished (although I happen to believe that it has a permanent value). But in the present crisis it is indispensable. In that crisis, experimental jurisprudence can and should perform an important and useful function. And, I submit, a jurisprudence which does not today, in some measure, fulfill that function is of little value."

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